

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 06-0095P**

**Sales Tax**

**For the months of April, June, July, and August 2005**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

**STATEMENT OF FACTS**

The late penalty was assessed on the late filing of monthly sales tax returns for the periods April, June, July, and August of 2005.

According to the taxpayer, the reason the taxpayer was late is that the taxpayer did not receive the filing frequency change letter (dated January 2005) until October 2005. Department records show the filing frequency change letter was sent timely in January 2005 by first class mail.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer argues the penalty should be abated as the taxpayer did not receive the filing frequency letter until October 2005. Furthermore, the taxpayer says the Department was not timely in notifying the taxpayer of the error as five months elapsed before the Department notified the taxpayer.

According to IC 6-8.1-3-11, the Department properly mails the filing frequency change letter if the Department mails the letter by first class mail. This legal procedure is supported by Holmes v. Randolph, 610 N.E. 2d 839 (Ind. 1993). With regard to the

instant case, the Department mailed the filing frequency timely by first class mail as documented by Department records, and therefore, the mailing is statutorily correct.

With regard to the Department's timeliness in notifying the taxpayer, the Department bills on periodic timetables. A review of the procedures indicated the Department was timely.

The regulation which controls the application of penalty is 45 IAC 15-11-2(b) which states,

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

### **FINDING**

The taxpayer's penalty protest is denied.